APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-30258

WESTLY WEST; DENNIS LYNCH; ROBERT POLITO;
HENRY JAUME; BRUCE VERRETTE,

Plaintiffs-Appellants,

versus

NICK A. CONGEMI, Chief of Police; CITY OF KENNER,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi [sic]
(Eastern District of Louisiana)
Lower Court No. 98-CV-1654-T

Filed: March 21, 2000

Before JONES, DUHE, and WIENER, Circuit Judges.

PER CURIAM:*

Having carefully considered this appeal in light of the briefs, oral arguments, and pertinent portions of the record, we

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* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except for the limited circumstances set forth in 5TH CIR. R. 47.5.4.

agree with the district court's analysis of the issues and affirm largely for the reasons stated in its opinion entered November 23, 1998.

The issue is whether the concededly constitutional "Little Hatch Act" of Louisiana, LA. R. S. 33:2504, may be enforced against police officers who, acting as representatives of a police officers' association in Kenner, communicated the association's endorsement of and support for a political candidate. Police Chief Congemi fired the appellants according to the direct command of the statute.

On appeal, counsel for appellants has been less than forthright in distinguishing between his individual clients' interest and that of the association, which was not permitted to intervene in the district court.[1] Notwithstanding the confusion, we construe appellants' complaint to be that although they were legitimately forbidden by the Little Hatch Act from personally engaging in political activities covered by that statute while employed as civil servants, the statute may not constitutionally be applied to them when they act as officers of the association. To do so, appellants claim, violates their First Amendment speech and association rights.

Acting as officers of their association and through it, the appellants caused a political contribution to, and an endorsement of, Candidate Stagni's campaign to be made. Such

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[1] Appellants' brief states: "The issue involved here is rather whether associations and unions of civil service employees may be made a target for attack and prevented from making political endorcements in their own name by the strategy of terminating union officers who carry out the official acts of the organization in private and without identifying themselves publicly in any way as civil servants." One might think that the association, rather than the police officers is the appellant.

But the association could -- and did -- notice an appeal only from the denial of intervention, a point which was not briefed and is therefore waived.

activities, undertaken "directly or indirectly," violate the plain language of Section 2504. Appellants contend, however, that when they act as association officers, their conduct is shielded from the prohibitions of the Little Hatch Act. We disagree. Like the district court, we conclude that this court's decision in *Wachsman v. City of Dallas,* 704 F.2d 160, 172 (5th Cir. 1983) is controlling:

> One further problem deserves our attention before we address the restrictions on contributions. The district court's invalidation of section 16(b)(1) regarding endorsements presented at nonpolitical gatherings applied only to individual employees, and not to their organizations. The Committee asserts that this ruling ignores its first amendment rights. These rights are derived from the individual members' associational and speech rights, see Citizens Against Rent Control, and from the public's right to free and uninhibited comment on political issues. *See Bellotti.* Although the district court failed to state why it reached different conclusions regarding Wachsman and the Committee, we perceive an appropriate distinction that justifies its order.
>
> [3] The Committee must act through a spokesman. Regarding individual employees, the court was obviously concerned with limiting an employee's right to endorse a candidate at a private and/or nonpolitical gathering (*e.g.*, a Kiwanis Club meeting or a neighborhood barbecue). Such a setting suggests a public employee acting as a private citizen. *This suggestion, however, does not fit a situation in which an official spokesman for an organization of city employees announces in that capacity the organization's endorsement of a particular city council candidate. The latter carries with it all the*

> *pernicious possibilities inherent in allowing individual employees to so address political gatherings.* The arrival of an official spokesman bearing such an endorsement largely imbues a gathering with a political flavor. Indeed, the appellant Committee here is the avowedly political arm of the city employee police and firefighters organizations. Thus, the City's interests in prohibiting endorsements will be present in any situation in which an organization *173 of city employees desires to make an endorsement. Therefore, the trial court's order in this regard is affirmed. (footnote omitted/emphasis added).

Wachsman and the district court also relied on the Supreme Court's decision in *U.S. Civil Service Comm'n v. Nat'l Ass'n of Letter Carriers*, 413 U.S. 548, 93 S.Ct. 2880 (1973), upholding similar restrictions on political activity by civil servants.

Because Chief Congemi's enforcement of the Little Hatch Act's ban on "direct or indirect" political activity by these appellants was constitutional, we need not reach the other issues raised on appeal. The judgement of the district court in favor of appellees is affirmed.

AFFIRMED.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-30258
USDC No. 98-CV-1654

WESTLY WEST, DENNIS LYNCH, ROBERT POLITO,
HENRY JAUME, BRUCE VERRETTE,

Plaintiffs-Appellants,

POLICE ASSOCIATION CITY OF KENNER,
International Union of Police
Associations, Local 8195, AFL-CIO,

Intervenor Plaintiff - Appellant,

versus

NICK A. CONGEMI, Chief of Police,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana

Filed: January 5, 1999

Before HIGGINBOTHAM, DeMOSS, and BENAVIDES,
Circuit Judges.

BY THE COURT:

In a letter filed in this court on December 29, 1998, the district court has requested that the above-referenced civil rights action "be remanded under Federal Rule of Civil Procedure 60(b), so that the court can correct an error concerning references to the City of Kenner as being a defendant in the suit." A district court cannot correct a judgment pursuant Rule 60(b) while an appeal is pending without obtaining leave of the court of appeals. *See Willie v. Continental Oil Co.*, 746 F.2d 1041, 1046 (5th Cir. 1984), and cases cited therein, *vacated by grant of rehearing en banc*, 760 F.2d 87 (5th Cir. 1985), *on rehearing*, 784 F.2d 706 (5th Cir. 1986) (en banc). *See also Travelers Ins. Co. v. Liljeberg Enterprises, Inc.*, 38 F.3d 1404, 1407 n.3 (5th Cir. 1994) (citing panel opinion in *Willie*). Accordingly, we treat the district court's letter as a request for authorization from this court to correct the judgment pursuant to Rule 60(b). We grant such request, and remand the case for further proceedings, if necessary.

We do not retain jurisdiction, and therefore any party desiring to appeal when a new final judgment is entered must file a notice of appeal at that time.

REMANDED.

/s/ Kenneth Lotz

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL. 504-589-6514
600 CAMP STREET
NEW ORLEANS, LA 70130

January 5, 1999

Ms Loretta Whyte, Clerk
Eastern District of Louisiana, New Orleans
United States District Court
500 Camp Street
Room C-151
New Orleans, LA 70130

No. 98-31407 West v. Congemi
USDC No. 98-CV-1654

Enclosed is a certified copy of the judgment issued as the mandate.

Sincerely,

CHARLES R. FULBRUGE III, Clerk

By: /s/ Kenneth Lotz
Kenneth Lotz, Deputy Clerk

cc: w/encl:
Mr Michael T Leibig
Mr Keith R Credo
Mr Philip John Boudousque
Mr Gerald Joseph Nielsen

MDT-1

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CIVIL ACTION
NO. 98-1654
SECTION "T" (2)

WEST, ET AL

VERSUS

CONGEMI

Filed: February 19, 1999
Date of Entry: February 23, 1999

ORDER AND REASONS

I. *BACKGROUND*

In the above-captioned matter, the Court issued both an Order and Reasons (Doc. #27) and a Judgment (Doc. #26) on November 23, 1999. These two documents purported to include the City of Kenner as a named defendant in this suit. After receiving notice of plaintiffs' appeal of this Court's judgment, including notice of a potential problem with this Court's holdings regarding the City of Kenner, this Court requested and received permission from the United States Court of Appeals for the Fifth Circuit under FRCP 60(b) to revisit this Court's judgment. Evidenced by Document #30, the Court of Appeals remanded this matter back to this Court for further disposition.

II. *LEGAL ANALYSIS*

The question before the Court is whether or not its decision to include the City of Kenner as defendant in both its Order and Reasons and its Judgment was proper in light of the record. After receiving briefing on the issue from both the plaintiffs and the defendants, this Court concludes that its action were appropriate. Both sides in this suit agree with the Court's recognition of the City of Kenner as a defendant here, as displayed in their memoranda submitted to the Court on that issue.

In support of this position, the Court points first to *Hafer v. Menlo*, 502 U.S. 21, 25, 112 S.Ct. 358, 361, 116 L.Ed.2d 301 (1991), where the Supreme Court stated as follows:

> In *Kentucky v. Graham,* 473 U.S. 159, 105 S.Ct. 3099, 87 L.Ed.2d 114 (1985), the Court sought to eliminate lingering confusion about the distinction between personal- and official-capacity suits. We emphasized that official -capacity suits '"generally represent only another way of pleading an action against an entity of which an officer is an agent."' *Id.*, at 165, 105 S.Ct., at 3104 (quoting *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 690, n. 55, 98 S.Ct. 2018, 2035, n. 55, 56 L.Ed.2d 611 (1978)). Suits against state officials in their official capacity therefore should be treated as suits against the State. 473 U.S., at 166, 105 S.Ct., at 3105.

With similar reasoning the Supreme Court reached the following conclusions in yet another case:

> Personal-capacity suits seek to impose personal liability upon a government official for actions he takes under color of state law. See, e.g., *Scheuer v. Rhodes*, 416 U.S. 232, 237-238, 94 S.Ct. 1683, 1686-

> 1687, 40 L.Ed.2d 90 (1974). Official-capacity suits, in contrast, "generally represent only another way of pleading an action against an entity of which an officer is an agent." *Monell v. New York City Dept. of Social Services,* 436 U.S. 658, 690, n. 55, 98 S.Ct. 2018, 2035, n. 55, 56 L.Ed.2d 611 (1978). As long as the government entity receives notice and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity. *Brandon*, supra, 469 U.S., at 471-472, 105 S.Ct., at 878. It is not a suit against the official personally, for the real party in interest is the entity. Thus, while an award of damages against an official in his personal capacity can be executed only against the official's personal assets, a plaintiff seeking to recover on a damages judgment in an official-capacity suit must look to the government entity itself.

Kentucky v. Graham, 473 U.S. at 165-166, 105 S.Ct. at 3105 (footnote omitted); *see also Leach v. Shelby County Sheriff*, 891 F.2d 1241, 1244-1246 (6th Cir. 1989) (containing a thorough analysis of the law, reasoning that the *Monell* doctrine properly applied whether municipality was formally named in suit or whether merely individual was named in his official capacity).

Therefore, this Court, having reviewed the record and the applicable law, particularly the plaintiffs' complaint and the defendants' answer, hereby finds that its rulings with regard to the City of Kenner as a defendant in this suit were appropriate. Clearly, Chief Congemi was named as a defendant in his official-capacity, and such a complaint can serve as another way of pleading an action against the City of Kenner of which Chief Congemi may be an agent. Throughout the proceedings, both the plaintiffs and the defendants treated the City of Kenner

as a defendant at all times; therefore, it is proper to apply the clear precedent of the United States Supreme Court in maintaining this Court's previous stance as to the inclusion of the City of Kenner in this suit.[1]

Accordingly,

IT IS ORDERED that the earlier dismissal of the plaintiffs' claims against the City of Kenner was appropriate under the prevailing law. Therefore, the Court reiterates its earlier conclusions, which are that the federal §1983 claims of the plaintiffs against the City of Kenner are **DISMISSED, WITH PREJUDICE,** and that the remaining state law claims are **REMANDED** back to Louisiana state court.

To avoid confusion the Court will restate its earlier orders contained in Document #27.

IT IS FURTHER ORDERED that the motion of the defendants, Chief Congemi and the City of Kenner, for summary judgment with regard to the plaintiffs's federal §1983 claims is **GRANTED**.

IT IS FURTHER ORDERED that the motion of the defendants for summary judgment as to all pending state law

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[1] Whether or not the City of Kenner was properly named as a defendant in this suit makes no difference as to what substantive law applies here. The *Monell* doctrine is applicable whether the Court views the defendant as being the City of Kenner or Chief Congemi in his official capacity. Moreover, the Court notes that it is very clear that Chief Congemi was sued in his official capacity by the plaintiffs in their original complaint. The same substantive result would occur in either instance, since under the case law mentioned above, "[a]s long as the government entity receives notice and an opportunity to respond, an official -capacity suit is, in all respects other than name, to be treated as a suit against the entity." *Kentucky v. Graham*, 473 U.S. at 165-166, 105 S.Ct. At 3105 (citation omitted).

claims is **DENIED.** The remaining state law claims are **REMANDED** back to Louisiana state court.

IT IS FURTHER ORDERED that the plaintiffs' cross motion for summary judgment is **DENIED.**

New Orleans, Louisiana, this 19th day of February, 1999.

/s/ G. Thomas Porteous Jr.
G. THOMAS PORTEOUS, JR.
UNITED STATES DISTRICT JUDGE

APPENDIX D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CIVIL ACTION
NO. 98-1654
SECTION "T" (2)

WEST, ET AL

VERSUS

CONGEMI

Filed: February 19, 1999
Date of Entry: February 23, 1999

JUDGMENT

The Court, having granted the Motion of defendants, Nick Congemi and the City of Kenner, for Summary Judgment against the plaintiffs, Westley West, Dennis Lynch, Robert Polito, Henry Jaume, and Bruce Verrette, in the above captioned case, it is the decision of this Court that judgment be entered in favor of the defendants. The Court also enters judgment here having reconsidered its earlier inclusion of the City of Kenner as a defendant pursuant to the order of the United States Court of Appeals for the Fifth Circuit. The Court finds that the inclusion of the City of Kenner was proper.

Accordingly,

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendants, Nick Congemi and the City of Kenner, for Summary Judgment against the

plaintiffs, Westley West, Dennis Lynch, Robert Polito, Henry Jaume, and Bruce Verrette, dismissing all federal claims, **WITH PREJUDICE**, and that all state law claims previously pending before this Court are **REMANDED** back to state court.

New Orleans, Louisiana this 19th day of February, 1999.

/s/ G. Thomas Porteous Jr.
G. THOMAS PORTEOUS, JR.
UNITED STATES DISTRICT JUDGE

APPENDIX E

MINUTE ENTRY
PORTEOUS, J.
November 24, 1998

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CIVIL ACTION
NO. 98-1654
SECTION "T" (2)

WEST, ET AL

VERSUS

CONGEMI

Filed: November 30, 1998
Date of Entry: December 1, 1998

The Court, having granted the Motion of defendants, Nick Congemi and the City of Kenner, for Summary Judgment against the plaintiffs, Westley West, Dennis Lynch, Robert Polito, Henry Jaume, and Bruce Verrette, in the above captioned case, hereby finds that the motion of the Police Association to intervene in this matter, previously set for hearing on November 24, 1998, thereafter continued without date by this Court, is now rendered moot.

Accordingly,

IT IS ORDERED that the Police Association's motion to intervene in this matter is now **MOOT**.

New Orleans, Louisiana, this 30th day of November, 1998.

/s/ G. Thomas Porteous Jr.

G. THOMAS PORTEOUS, JR.
UNITED STATES DISTRICT JUDGE

APPENDIX F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CIVIL ACTION
NO. 98-1654
SECTION "T" (2)

WEST, ET AL

VERSUS

CONGEMI

Filed: November 23, 1998
Date of Entry: November 24, 1998

This cause came for hearing on a previous date upon the cross motions for summary judgment by defendants, Nick Congemi and the City of Kenner, and the plaintiffs, Westley West, Dennis Lynch, Robert Polito, Henry Jaume, and Bruce Verrette (hereinafter, "plaintiffs"). Oral argument was entered by the Court on November 4, 1998.

The Court, having studied the memoranda submitted by the parties and having considered the oral arguments set forth by counsel, is fully advised in the premises and ready to rule.

ORDER AND REASONS

I. *BACKGROUND*

The plaintiffs were each members of the Classified Civil Service of the City of Kenner Police Department. The plaintiffs' activities, at all material times, were subject to the

prohibitions contained in La.R.S. 33:2504 (hereinafter, "§2504") (set forth later). The five plaintiffs were also actively involved in the Police Association City of Kenner (hereinafter, "PACK"). It is disputed as to whether PACK was a union or a non-union association. At all relevant times defendant Nick Congemi was the Chief of Police of the Kenner Police Department.

On or about February 23, 1998, Joseph Stagni, candidate for Councilman-at-Large for the City of Kenner, wrote to PACK and asked for PACK to endorse him. Plaintiffs, who allege themselves to comprise the Executive Board of PACK, contend that they polled PACK's membership after Stagni's request to determine whether PACK should endorse Stagni as a political candidate. The plaintiffs allege further that Chief Congemi communicated his opposition regarding PACK's support of candidate Stagni, allegedly indicating that PACK members should be wary of any political support that they might offer to candidate Stagni. Moreover, plaintiffs maintain that Chief Congemi continually exhibited his animosity towards PACK.

The plaintiffs allege that through PACK they voted to support candidate Stagni after receiving the advice of counsel that they could do so without fear of adverse legal consequences. After voting to support candidate Stagni, the plaintiffs, through their alleged positions on the Executive Board of PACK, notified Stagni that PACK would endorse his candidacy, and provided Stagni with a monetary contribution of $300.[1] The letter endorsing Stagni was distributed to other

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[1] While the plaintiff's maintain that the only support that they provided Stagni was through PACK, it should be noted that the plaintiffs did personally sign the letter displaying PACK's support of Stagni. Also, defendants contest whether the plaintiffs were actually executive board members of PACK at all, since they failed to follow the appropriate

Kenner Civil Service employees. Moreover, PACK's endorsement of Stagni was publicly announced by Stagni during his campaign.

After conducting an internal affairs investigation, Chief Congemi terminated the five plaintiffs in June of 1998. The plaintiffs contend that they were terminated solely because of Chief Congemi's hatred of the plaintiffs and their association (PACK).

The defendants note that the Office of the State Examiner made it plainly clear to the plaintiffs, even before they engaged in any political activity, that such activity, engaged in either directly or indirectly, was expressly prohibited by Louisiana state law. These warnings were in the form of direct responses to inquiries by the plaintiffs (including copies of applicable Attorney General Opinions), as well as a newsletter distributed to plaintiffs and instructions posted on bulletin boards located throughout the Kenner Police Department. The defendants contend that these warnings provided actual knowledge to the plaintiffs that any political activity undertaken by them was proscribed by law (and that any violation would result in mandated termination).

The defendants also dispute the procedure followed by the plaintiffs in their acts as alleged executive board members. The defendants claim that the letter of March 3, 1998 indicates that the decision to endorse Stagni had already been made by the individual plaintiffs before any vote by the general membership

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electoral procedures as set forth in PACK's charter (?). Furthermore, with regard to the $300 contribution, the defendants claim that it is undisputed that this donation did not occur as a result of any decision of PACK as an association, but was distributed as a result only of the plaintiffs actions.

of PACK.[2] Defendants contend that no vote ever took place. Moreover, the defendants point to a letter written by thirteen members of PACK, who objected to the process followed by the plaintiffs in their decision to have PACK support Stagni.

In April of 1998, Chief Congemi received recommendations and/or opinions from Gerald Nielsen and Susan Weldon (Congemi's current counsel), and from Philip Boudousque (counsel for Kenner Police Department) indicating that how plaintiffs' political activity should be viewed in light of La.R.S. 33:2504A(4) and 33:2504B.

As indicated by the plaintiff, Chief Congemi commenced a formal internal affairs investigation. During this investigation Congemi tried to obtained documents from plaintiffs' counsel, but was unsuccessful. Moreover, Congemi did obtain advice from a lawyer, Ralph Zatkis, concerning the possible violation of any labor laws. Zatkis informed Congemi that the enforcement of §2504 would not implicate any labor laws. Congemi also obtained advice from Nielsen and Weldon during the internal affairs investigation to make sure that he did not violate any laws.

Chief Congemi maintains that he followed appropriate pre-termination procedures, including providing written notice to the plaintiffs regarding a pre-termination hearing.[3] The pre-

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[2] The defendants assert that votes by the PACK membership were normally done by secret ballot vote. Defendants contend that this was not how the decisions to endorse and contribute money to candidate Stagni were arrived at by PACK.

[3] Before the pre-termination hearing could be held, the plaintiffs sought injunctive relief and damages in state court pursuant to 42 U.S.C. §1983. This state court suit was removed to this federal court by the defendants. On June 4, 1998, this Court declined to issue a TRO, but noted that it would reconsider the issue of a preliminary injunction after Congemi made his final decision as to whether the plaintiffs would actually be terminated.

termination hearing was eventually held on June 4, 1998. Defendants contend that at the pre-termination hearing, the plaintiffs only provided a copy of the $300 contribution check, a copy of PACK's letter of endorsement to Stagni, and a copy of the certificate of filing of PACK's Articles of Incorporation. On Monday, June 15, 1998, Chief Congemi, citing the mandates of §2504, terminated the five plaintiffs. The defendants contend that the post-termination process currently being complied with satisfies all concerns of due process. *See* La.R.S. 33:2501 (setting forth Louisiana law regarding the required post-termination procedures in this situation). The hearing with the Kenner Civil Service Board has yet to be completed.

In the conclusion of the defendants' motion for summary judgment, they state as follows:

> Each of the Plaintiffs' terminations were predicated upon four separate violations of La.R.S. 33:2504. If this Honorable Court finds a violation as to the contribution, ***or*** a violation as to acting as a factional club, ***or*** agrees that the various letters and campaign materials qualify as a public statement, ***or*** agrees that any act taken by the Plaintiffs constitutes an act which qualifies as "taking any part" in a political campaign, then, there is no *genuine* dispute of *material* fact, for the statute *has* been violated. In that event, La.R.S. 33:2504B states, "The appointing authority *shall* discharge from the service any employee whom he deems guilty of violating any *one* or more of the provisions of this section." Under this provision, if this Honorable Court agrees that *any* of the four portions of the R.S. 33:2504A(3) or A(4) were violated, Chief Congemi had absolutely no choice. He was under a mandatory and non-discretionary duty

> tendered to him by the Louisiana Legislature, to uphold this "essential" principal of government.

Doc. #14.

The plaintiffs oppose the motion of the defendants, and move for summary judgment themselves, contending that Louisiana law does not mandate that Chief Congemi interfere with the inner workings of PACK's activity.[4] The plaintiffs believe that they were acting as executive board members of PACK, and that it was PACK that endorsed and contributed to Stagni, not them as individuals. The plaintiffs move for summary judgment, claiming that "the heart of the case is a legal question of whether Chief's termination of the Executive Board members for the Union's [(PACK's)] political speech violates their Constitutional rights." Doc. #19.[5] It is very important to note that the Plaintiffs do not claim that the state statute at issue is unconstitutional, but claim that Chief Congemi erroneously enforced it.

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[4] In their motion for summary judgment and in their opposition to defendants' motion for summary judgment, the plaintiffs make claims based on the fact that PACK is a union. That fact is under dispute. Even some of the plaintiffs have indicated in their depositions that PACK was a non-union association.

[5] In their memoranda regarding the motions at issue, the plaintiffs most specifically refer to the interference with their constitutionally protected right of association. The defendants correctly point out that in their complaint the plaintiffs only raised the constitutional claims of denial of "due process" and denial of "equal protection." The defendants assert that there are no claims in plaintiffs' petition that mention freedom of association or freedom of speech.

II. *LEGAL ANALYSIS*

A. *Law on Summary Judgment*

Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment should be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ.P. 56(c). "The party moving for summary judgment bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the record which it believes demonstrate the absence of a genuine issue of material fact." *Stults v. Conoco,* 76 F.3d 651 (5th Cir. 1996), (citing *Skotak v. Tenneco Resins, Inc.*, 953 F.2d 909, 912-13 (5th Cir.) (quoting *Celotex Corp. v. Catrett,* 477 U.S. 317, 323 (1986). When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts. The nonmoving party must come forward with "specific facts showing that there is a genuine issue for trial." *Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 588 (1986) (emphasis supplied): *Tubacex, Inc. v. M/V Risan*, 45 F.3d 951, 954 (5th Cir. 1995).

Thus, where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no "genuine issue for trial." *Matsushita Elec. Industrial Co.*, 475 U.S. at 588. Finally, the court notes that substantive law determines the materiality of facts and only "facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

B. *42 U.S.C. §1983 and Qualified Immunity – Individual Official Liability*

A determination of whether a public official is entitled to qualified immunity from liability under §1983 involves essentially a three-step analysis. The first step is to identify the specific constitutional right allegedly infringed. *See Albright v. Oliver*, 510 U.S. 266, 271, 114 S.Ct. 807, 811-812 (1994) ("Section 1983 'is not itself a source of substantive rights,' but merely provides 'a method for vindicating federal rights elsewhere conferred.' [citation omitted]. The first step in any such claim is to identify the specific constitutional right allegedly infringed. [citation omitted].") Secondly, the court must determine whether the factual claims of the plaintiff, if proven, actually establish a violation of the said identified and specific constitutional right. *See Siegert v. Gilley*, 500 U.S. 226, 233, 111 S.Ct. 1789, 1793 (1991) ("Decision of this purely legal question permits courts expeditiously to weed out suits which fail the test without requiring a defendant who rightly claims qualified immunity to engage in expensive and time consuming preparation to defend the suit on its merits."). The third and final step is only taken if step two is resolved in the defendant's favor. *See Samaad v. City of Dallas*, 940 F.2d 925, 940 (5th Cir. 1991). If the court determines that the claims of the plaintiff do establish a violation of a specific constitutional right, then the court must ascertain whether the constitutional right asserted by the plaintiff to have been violated by the defendant was "clearly established" at the time the defendant acted. *See Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738 (1982) ("[G]overnment officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."); *see also Melear v.*

Spears, 962 F.2d 1177, 1183 (5th Cir. 1989) (The unlawfulness of the act must be apparent in light of preexisting law.).

The qualified immunity doctrine attempts to balance society's interest in redressing private injury against the risk of interfering with governmental functions. *See James v. Sadler*, 909 F.2d 834, 838 (5th Cir. 1990). Thus, it is the party seeking damages from an official asserting qualified immunity that bears the burden of overcoming that defense. *Hart v. O'Brien*, 127 F.3d 424, 441-442 (5th Cir. 1997).

The Court will now examine the claims of the plaintiffs to determine what specific constitutional right has allegedly been infringed, and whether the factual claims of the plaintiff, if proven, actually establish a violation of the said identified and specific constitutional right. In their pleading, the plaintiffs complain of violations of due process, equal protection, and First Amendment rights of association and free speech.[6] The plaintiffs claim that Chief Congemi terminated them under the guise of La.R.S. 33:2504 to further his own interests. Congemi counters that these terminations were mandates by the Louisiana statute, giving him no choice in the matter.

At issue is La. R.S. 33:2504. In pertinent part, that statute states as follows:

> §2504. Political activities prohibited
>
> A. Political activities by and extending to employees of the classified service are hereby prohibited as follows:
>
> (1) No person shall seek or attempt to use any political endorsement in connection with any

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[6] There is some dispute as to whether the plaintiffs properly plead violations of the right to association and right to free speech. However, this Court will address those claims since they do not have an effect on this Court's findings.

appointment to a position in the classified service.

(2) No person shall use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person, or for any consideration.

(3) No employee in the classified service shall, directly or indirectly, pay, or promise to pay, any assessment, subscription, or contribution for any political organization or purpose, or solicit or take part in soliciting any such assessment, subscription, or contribution. No person shall solicit any such assessment, subscription, or contribution of any employee in classified service. The prohibitions of this Subsection shall not be construed as applying to membership dues paid, or contributions made, to non-political employee organizations, pension funds, civic enterprises, the Louisiana Civil Service League or any similar non-political and non-partisan organization.

(4) No employee in the classified service shall (a) be a member of any national, state, or local committee of a political party, (b) be an officer or member of a committee of any factional, political club or organization, (c) be a candidate for nomination or election to public

> office, (d) make any political speech or public political statement in behalf of any candidate seeking to be elected to public office, or (e) take any part in the management or affairs of any political party or in the political campaign of any candidate for public office, except to privately express his opinion and to cast his vote . . .
>
> B. The appointing authority shall discharge from the service any employee whom he deems guilty of violating any one or more of the provisions of this Section. The board may, upon its own initiative, investigate any officer or employee in the classified service whom it reasonably believes guilty of violating any one or more of the provisions. Any citizen, taxpayer, municipal officer, or employee may file with the board detailed charges in writing against any employee in the classified service for violating any one or more of the provisions of this Section. The board shall, within thirty days after receiving the written charges, hold a public hearing and investigation and determine whether such charges are true and correct. If the board should find upon its investigation of any employee that he has violated any of the foregoing provisions, the board shall order the appointing authority to forthwith discharge the guilty employee from the service and the appointing authority shall forthwith discharge the employee....

If there has been no constitutional violation, then there is no need to address further the doctrine of qualified immunity. *See Siegert,* 500 U.S. 226, 111 S.Ct. 1789.

The Court notes that even the plaintiffs have agreed that §2504 is constitutional. The law is well established that both the states and the federal government can regulate certain

political activity of civil servants. *See U.S. Civil Service Commission v. National Association of Letter Carriers AFL-CIO*, 413 U.S. 548, 93 S.Ct. 2880, 37 L.Ed.2d 796 (1973) (Here, the Supreme Court reaffirmed *United Public Workers v. Mitchell*, 330 U.S. 75, 67 S.Ct. 556, 91 L.Ed. 754 (1947). The Court explicitly stated that a law that "forbade activities such as organizing a political party or club; actively participating in fund-raising activities for a partisan candidate or political party; becoming a partisan candidate for, or campaigning for, an elective public office; actively managing the campaign of a partisan candidate for public office; initiating or circulating a partisan nominating petition or soliciting votes for a partisan candidate for public office; or serving as a delegate, alternate or proxy to a political party convention" would be "unquestionably...valid." Furthermore, the Court observed that the rights to associate and participate in politics are not absolute and that federal employees' political activities could be constitutionally prohibited); *see also Broadrick v. Oklahoma*, 413 U.S. 601, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973) (This was a companion case to *Letter Carriers*. Here, the challenged provision was a state statute that restricted civil servants' political activities in a manner similar to the Hatch Act. The challenge was based on the contention that the statute's prohibitions were vague and overbroad. The Court disagreed, and held that "at least insofar as it forbids classified employees from: soliciting contributions for political candidates, political parties, or other partisan political purposes; becoming members of national, state, or local committees of political parties, or officers or committee members in partisan political clubs, or candidates for any paid public office; taking part in the management or affairs of any political party's partisan political campaign; serving as delegates or alternates to caucuses or conventions of political parties; addressing or taking an active part in partisan political rallies or meetings; soliciting votes or assisting voters at the polls or helping in a

partisan effort to get voters to the polls; participating in the distribution of partisan campaign literature; initiating or circulating partisan nominating petitions; or riding in caravans for any political party or partisan political candidate," the Oklahoma statute was valid.). Furthermore, this Court need only address Louisiana's restrictions on political activity with regards to partisan politics as opposed to non-partisan political activity.[7]

Since there is no dispute here as to the constitutionality of §2504 itself, the Court must address the issue of whether Chief Congemi constitutionally applied this statute to the plaintiffs. As the Court has indicated, if Congemi violated no constitutional right, then the plaintiffs can maintain no §1983 claims against him. The plaintiffs argue that they were merely executive board members of PACK, and that PACK as an association (or union) decided to endorse and contribute to Stagni. The plaintiffs maintain that this activity does not fall under the prohibitions of §2504. The defendants dispute the fact that the plaintiffs were executive board members of PACK, but submit that whether they were board members or not, the plaintiffs' activities violated §2504. The activity proscribed by §2504 is such "direct and indirect" political activity by employees of the classified service. The defendants urge that the political activity undertaken by the plaintiffs did in fact constitute activity proscribed by §2504.

In *Letter Carriers,* the Supreme Court upheld, among other things, the Hatch Act prohibition on political activity by indirection by certain civil servants. In the appendix to its

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[7] The activity of the plaintiffs were at all times related to the election of candidate Stagni, who was running in a partisan election. This Court would have to employ a different analysis if the plaintiffs had been cited for engaging in non-partisan political activity. *See Wachsman v. City of Dallas*, 704 F.2d 160 (5th Cir. 1983).

opinion, the Supreme Court acknowledged the validity of the following legislation:

> 12. Activity by indirection: Any political activity which is prohibited in the case of an employee acting independently is also prohibited in the case of an employee acting in open or secret cooperation with others. Whatever the employee may not do directly or personally, he may not do indirectly or through an agent, officer, or employee chosen by him or subject to his control. Employees are therefore accountable for political activity by persons other than themselves, including wives or husbands, if, in fact, the employees are thus accomplishing by collusion and indirection what they may not lawfully do directly and openly. Political activity in fact, regardless of the methods or means used by the employee, constitutes the violation....
>
> 16. Clubs and organizations: Employees may be members of political clubs, but it is improper for them to be active in organizing such a club, to be officers of the club, or members or officers of any of its committees or to act as such, or to address a political club. Service as a delegate from such a club to a league of political clubs is service as an officer or representative of a political club and is prohibited, as is service as a delegate or representative of such a club to or in any other organization. In other words, an employee may become a member of a political club, but may not take an active part in its management or affairs, and may not represent other members or attempt to influence them by his actions or utterances....

Letter Carriers, 413 U.S. at 581, 583, 93 S.Ct. at 2898-2899 (citing the United States Civil Service Commission Form 1236,

Political Activity and Assessments, September 1939, as inserted into the Congressional Record by Senator Hatch, 86 Cong.Rec. 2938-2940).[8] The language in Section 12 above mirrors that contained in the warning sheet issued by Louisiana's State Examiner and in the opinions of Louisiana's Attorney General. *See* Doc. #14, p.9, n.5. Further case law dealing with our issue of whether the plaintiffs could do indirectly that which they cannot do directly sets is as follows:

> One further problem deserves our attention before we address the restrictions on contributions. The district court's invalidation of section 16(b)(1) regarding endorsements presented at nonpolitical gatherings applied only to individual employees, and not to their organizations. The Committee asserts that this ruling ignores its first amendment rights. These rights are derived from the individual members' associational and speech rights...and from the public's right to free and uninhibited comment on political issues....Although the district court failed to state why it reached different conclusions regarding Wachsman and the Committee, we perceive an appropriate distinction that justifies its order.
>
> The Committee must act through a spokesman. Regarding individual employees, the court was obviously concerned with limiting an employee's right to endorse a candidate at a private and/or nonpolitical gathering (e.g., a Kiwanis Club meeting

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[8] The court in *Wachsman v. City of Dallas*, 704 F.2d 160, 171 (5th Cir. 1983) states that "[v]irtually all the numerous restrictions on federal employee political activity upheld in *Letter Carriers* . . . apply as much to strictly state and local elections and political affairs as to elections for federal office and political activities attendant thereto." *See also Broadrick v. Oklahoma*, 413 U.S. 601, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973).

> or a neighborhood barbecue). Such a setting suggests a public employee acting as a private citizen. *This suggestion, however, does not fit a situation in which an official spokesman for an organization of city employees announces in that capacity the organization's endorsement of a particular city council candidate. The latter carriers with it all the pernicious possibilities inherent in allowing individual employees to so address political gatherings.* The arrival of an official spokesman bearing such an endorsement largely imbues a gathering with a political flavor. *Indeed, the appellant Committee here is the avowedly political arm of the city employee police and firefighters organizations. Thus, the City's interests in prohibiting endorsements will be present in any situation in which an organization of city employees desires to make an endorsement.* Therefore, the trial court's order in this regard is affirmed.

Wachsman v. City of Dallas, 704 F.2d 160, 172-173 (5th Cir. 1983) (citations omitted) (footnote omitted) (emphasis added). While §2504 has not been specifically interpreted by the courts, the meaning of that statute should closely follow the interpretations of the statues in *Letter Carriers, Broadrick*, and *Wachsman.*

This Court does not need to determine precisely what "indirect political activity" as mentioned in §2504 should encompass. This Court need only determine if the actions of the plaintiffs properly fall within the ambits of that section, because if they do, then Chief Congemi was mandated by Louisiana law to terminate the plaintiffs. This Court concludes that the plaintiffs have raised no genuine issue of material fact which would preclude a finding by this Court that there actions did not fall within the proscribed political activity of §2504. While

the plaintiffs do have rights under the United States Constitution, including the rights to equal protection, due process, the right of association, and the right to free speech, the plaintiffs do not have absolute rights to be police officers for the City of Kenner. The provisions of §2504 proscribe certain political activity undertaken "directly or indirectly." The endorsement of and subsequent monetary contribution to candidate Stagni by PACK, an association (or union) of Kenner police officers, which was controlled by the five plaintiffs in this case, amounted to at least indirect political activity as referenced by the Louisiana statute. As the Court stated earlier, the inquiry here is not whether §2504 is unconstitutional, but whether Chief Congemi properly applied that unconstitutional statute to the plaintiffs. The Court finds that Chief Congemi did properly comply with the statute.

Even if this Court was to find that Chief Congemi did not properly apply §2504 in this case, thereby violating certain constitutional rights of the plaintiffs, the Court would still be compelled to find that Chief Congemi is protected by the doctrine of qualified immunity. The final step in a determination of qualified immunity is whether the constitutional right asserted by the plaintiff to have been violated by the defendant was "clearly established" at the time the defendant acted. *See Harlow v. Fitzgerald*, 457 U.S. at 818, 102 S.Ct. at 2738 ("[G]overnment officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.").[9] If the Court were to find that the activity of the plaintiffs was not within the

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[9] The Court notes that §2504 does not vest discretion with Chief Congemi, but mandates termination of the plaintiffs if they are found to be in violation of the statute.

contemplation of §2504, and that Chief Congemi violated the constitutional rights of the plaintiffs when he terminated them, this Court would still be compelled to find that such constitutional rights (in this context) were not "clearly established statutory or constitutional rights of which a reasonable person would have known."[10] *Id.* Therefore, the plaintiffs can maintain no claims against Chief Congemi under §1983. Accordingly, summary judgment is granted in favor of Chief Congemi with regard to the plaintiffs' §1983 charges.

C. *§1983 and Municipal Liability*

In any case alleging municipal liability under §1983, the plaintiff must be able to prove a direct casual link between a policy, practice or custom of the municipality being sued, and the alleged constitutional violation. *See City of Canton Ohio v. Harris*, 489 U.S. 378, 384, 109 S.Ct. 1197, 1203 (1989). A mere showing of a constitutional violation by a municipal employee is insufficient for municipal liability, for there is no *respondeat superior* liability for §1983 violations. *Monell v. Dept. of Social Services of City of New York*, 436 U.S. 658, 98 S.Ct. 2018 (1978). To prove municipal liability, plaintiff must prove that the municipality was itself the "moving force" behind the constitutional violation by the employee. *See Kentucky v. Graham*, 473 U.S. 159, 166, 105 S.Ct. 3099, 3105 (1985). This is because "the touchstone of the §1983 action against the government body is an allegation that official policy is responsible for a deprivation of rights protected by the Constitution...." *Monell*, 436 U.S. at 690, 98 S.Ct. at 2036.

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[10] The assertions of the plaintiffs that Chief Congemi had improper motives in his treatment of the plaintiffs do not affect this Court's analysis here. *See Davis v. Scherer*, 468 U.S. 183, 191, 104 S.Ct. 3012, 3017 (1984) ("*Harlow v. Fitzgerald*...rejected the inquiry into state of mind in favor of a wholly objective standard.").

However, the Court's analysis as to the liability of the City of Kenner must flow from the findings of this Court above as to the liability of Chief Congemi, where this Court determined that there was no constitutional violation in Chief Congemi's application of the mandates of §2504. The Fifth Circuit has long recognized that simply following the mandatory dictates of state law cannot form a predicate for *Monell* liability. This point was explained in *Bigford v. Taylor*, 834 F.2d 1213, 1222 (5th Cir. 1988), when the Fifth Circuit stated that a county official's "deliberate or mistaken departure from controlling law" cannot be said to represent county policy. *See also Bethesda Lutheran Homes and Svcs. Inc. v. Leean*, 154 F.3d 716, 718-719 (7th Cir. 1998) ("But the state of mind of local officials who enforce or comply with state or federal regulations is immaterial to whether the local government is violating the Constitution if the local officials could not act otherwise without violating state or federal law. The spirit, the mindset, the joy or grief of local officials has no consequences for the plaintiffs if these officials have no discretion that they could exercise in the plaintiffs' favor. '[M]unicipal liability under §1983 attaches where--and only where--a deliberate choice to follow a course of action is made from among various alternatives.'") (quoting *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483, 106 S.Ct. 1292, 89 L.Ed.2d 452 (1986) (plurality opinion)) (other citation omitted).

The Court finds that the plaintiffs have failed to introduce genuine issues of material fact that would lead a fact finder to conclude that the City of Kenner should be held liable under the *Monell* doctrine. Chief Congemi was enforcing a constitutional Louisiana state statute, the terms of which mandate termination in the situation at issue. Once it was found that the actions of the plaintiff fell under the definition of proscribed "direct or indirect" political activity, then the plaintiffs' §1983 claims against the City of Kenner must

necessarily fail. Therefore, summary judgment should be entered in favor of the City of Kenner with regard to the plaintiffs' §1983 claims.

D. *The Plaintiffs' State Law Claims*

Under 28 U.S.C. §1367(c)(3), when federal law claims that serve as the basis of subject matter jurisdiction are dismissed, and only state law claims based on supplemental jurisdiction remain, a district court has broad discretion to remand the state law claims. *See* 28 U.S.C. §1367(c)(3) ("The district courts may decline to exercise supplemental jurisdiction...if the district court has dismissed all claims over which it has original jurisdiction."); *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 108 S.Ct. 614, 98 L.Ed.2d 720 (1988); *see also Brown v. Southwestern Bell Telephone Co.*, 901 F.2d 1250, 1254 (5th Cir. 1990) ("[T]he decision as to whether to retain the pendent claims is within the sound discretion of the district court.").

The Court, having dismissed the federal law claims of the plaintiffs, hereby declines to exercise supplemental jurisdiction and remands all pending state law claims in this matter back to state court.

Accordingly,

IT IS ORDERED that the motion of the defendants, Chief Congemi and the City of Kenner, for summary judgment with regard to the plaintiffs' federal §1983 claims are **GRANTED.**

IT IS FURTHER ORDERED that the motion of the defendants for summary judgment as to all pending state law claims is **DENIED.** The remaining state law claims are **REMANDED** back to Louisiana state court.

IT IS FURTHER ORDERED that the plaintiffs' cross motion for summary judgment is **DENIED.**

New Orleans, Louisiana, this 23rd day of November, 1998.

/s/ G. Thomas Porteous Jr.
G. THOMAS PORTEOUS, JR.
UNITED STATES DISTRICT JUDGE

APPENDIX G

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CIVIL ACTION
NO. 98-1654
SECTION "T" (2)

WEST, ET AL

VERSUS

CONGEMI

Filed: November 23, 1998
Date of Entry: November 24, 1998

JUDGMENT

The Court having granted the Motion of defendants, Nick Congemi and the City of Kenner, for Summary Judgment against the plaintiffs, Westley West, Dennis Lynch, Robert Polito, Henry Jaume, and Bruce Verrette, in the above captioned case, it is the decision of this Court that judgment be entered in favor of the defendants.

Accordingly,

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of defendants, Nick Congemi and the City of Kenner, for Summary Judgment and against the plaintiffs, Westley West, Dennis Lynch, Robert Polito, Henry Jaume, and Bruce Verrette, dismissing all federal claims, **WITH PREJUDICE,** and that all state law claims previously

pending before this Court are **REMANDED** back to state court.

New Orleans, Louisiana this 23rd day of November, 1998.

/s/ G. Thomas Porteous Jr.
G. THOMAS PORTEOUS, JR.
UNITED STATES DISTRICT JUDGE

APPENDIX H

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-30258

WESTLY WEST; DENNIS LYNCH; ROBERT POLITO; HENRY JAUME; BRUCE VERRETTE,

Plaintiffs-Appellants,

v.

NICK A. CONGEMI, Chief of Police; CITY OF KENNER,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana, New Orleans

Filed: May 15, 2000

ON PETITION FOR REHEARING
AND REHEARING EN BANC

(Opinion 3/21/00, 5 Cir., _____, _____ F.3d _____)

Before JONES, DUHE, and WIENER, Circuit Judges.

PER CURIAM:

(X) The Petition for Rehearing is DENIED and no member of this panel nor judge in regular active service on the court having requested that the court be polled on Rehearing En Banc, (FED. R. APP. P. and 5TH CIR. R. 35) the Petition for Rehearing En Banc is also DENIED.

( ) The Petition for Rehearing is DENIED and the court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service not having voted in favor, (FED. R. APP. P. and 5TH CIR. R. 35) the Petition for Rehearing En Banc is also DENIED.

( ) A member of the court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor, Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ Edith H. Jones
United States Circuit Judge

REHG-4A

CLERK'S NOTE
SEE FRAP AND LOCAL RULES 41 FOR STAY OF THE MANDATE.

APPENDIX I

LOUISIANA STATUTES

LOUISIANA REVISED STATUES
TITLE 33. MUNICIPALITIES AND PARISHES
CHAPTER 5. CIVIL SERVICE
PART II. FIRE AND POLICE CIVIL SERVICE LAW FOR MUNICIPALITIES BETWEEN 13,000 AND 250,000

La. R.S. 33:2504 (2000)

2504. Political activities prohibited

A. Political activities by and extending to employees of the classified service are hereby prohibited as follows:

(1) No person shall seek or attempt to use any political endorsement in connection with any appointment to a position in the classified service.

(2) No person shall use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person, or for any consideration.

(3) No employee in the classified service shall, directly or indirectly, pay, or promise to pay, any assessment, subscription, or contribution for any political organization or purpose, or solicit or take part in soliciting any such assessment, subscription, or contribution. No person shall solicit any such assessment, subscription, or contribution of any employee in classified service. The prohibitions of this Sub-section shall not be construed as applying to membership dues paid, or

contributions made, to non-political employee organizations, pension funds, civic enterprises, the Louisiana Civil Service League or any similar non-political and non-partisan organization.

(4) No employee in the classified service shall (a) be a member of any national, state, or local committee of a political party, (b) be an officer or member of a committee of any factional, political club or organization, (c) be a candidate for nomination or election to public office, (d) make any political speech or public political statement in behalf of any candidate seeking to be elected to public office, or (e) take any part in the management or affairs of any political party or in the political campaign of any candidate for public office, except to privately express his opinion and to cast his vote.

(5) No person elected to public office shall, while serving in the elective office, be appointed to or hold any position in the classified service.

(6) No appointing authority, or agent or deputy thereof, shall directly or indirectly, demote, suspend, discharge, or otherwise discipline, or threaten to demote, suspend, discharge or otherwise discipline, or discriminate against any person in the classified service for the purpose of influencing his vote, support, or other political activity in any election or primary election. No appointing authority, or agent or deputy thereof, shall use his official authority or influence, by threats, promises or other means, directly or indirectly, to coerce the political action of any employee in the classified service.

B. The appointing authority shall discharge from the service any employee whom he deems guilty of violating any one or more of the provisions of this Section. The board may, upon its own initiative, investigate any officer or employee in the classified service whom it reasonably believes guilty of violating any one or more of the provisions. Any citizen,

taxpayer, municipal officer, or employee may file with the board detailed charges in writing against any employee in the classified service for violating any one or more of the provisions of this Section. The board shall, within thirty days after receiving the written charges, hold a public hearing and investigation and determine whether such charges are true and correct. If the board should find upon its investigation of any employee that he has violated any of the foregoing provisions, the board shall order the appointing authority to forthwith discharge the guilty employee from the service and the appointing authority shall forthwith discharge the employee.

C. Whoever violates this Section shall be subject to the penalties provided in R.S. 33:2507. In addition any employee in the classified service who is discharged because of violating a foregoing provision shall not again be eligible for employment or public office in the classified service for a period of six years from the time of his discharge.

APPENDIX J

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CIVIL ACTION
NO. 98-1654
SECTION "T"

MAGISTRATE 2

WESTLEY WEST; DENNIS LYNCH, ROBERT POLITO, HENRY JAUME, and BRUCE VERRETTE

VERSUS

NICK A. CONGEMI, CHIEF OF POLICE

STATEMENT OF MATERIAL FACTS

NOW INTO COURT through undersigned counsel come Defendants/Movers, Chief of Police Nick Congemi and the City of Kenner, who submits that the following facts, and no others, are material to their Motion for Summary Judgment, and that there are no genuine disputes as to these facts:

1) Each of the Plaintiffs were members of the classified Civil Service of the City of Kenner Police Department during their employment with that department. Civil Service in Kenner is governed by Part II of Louisiana's Civil Service law, that being La. R.S. 33:2471 et seq.

2) Plaintiff's activities, at all material times herein, were subject to the prohibitions contained in La.R.S. 33:2504. Said statute was originally enacted in 1944, and represents Louisiana's "Little Hatch Act."

3) On February 28, 1978, Louisiana's Attorney General rendered a formal Attorney General Opinion, bearing number 78-126, wherein he provided his official opinion as to "whether the Slidell Police Union,[1] whose members are classified employees under the Slidell Fire and Police Civil Service, may endorse candidates for Slidell municipal offices. Citing La. R.S. 33:2504, Louisiana's Attorney General provided the following response:

> In our opinion, if the Slidell Police Union endorses political candidates, it is no longer a non-political employee organization, but rather a political club or organization. Classified members of the Slidell Police Civil Service would be prohibited from being a member of such an organization and would be prohibited from paying dues to it.

R.S. 33:2504(B) provides in pertinent part:

> The appointing authority shall discharge from the service any employee whom he deems guilty of violating any one or more of the provisions of this section. (Exhibit 3)

4) By letter dated February 23, 1998, Joseph "Joe" Stagni, requested the endorsement of PACK for his candidacy for Division "A" Counsel at Large for the City of Kenner. A Copy of Mr. Stagni's letter was attached to the Plaintiffs' Petition as Exhibit A. (Plaintiffs' Petition, Paragraph III)

5) On or about March 3, 1998, the letter attached as Exhibit B to the Plaintiffs' Petition was distributed to other Kenner Civil Service Employees. Each Plaintiff signed the letter which states:

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[1] Slidell, like Kenner, is governed by Part II of the Louisiana Civil Service law. Only the City of New Orleans is governed by Part I.

> At this the [sic] time we, the Executive Board of the Police Association City of Kenner (PACK), have decided to endorse and support Mr. Stagni in his endeavor to seek political office. (Plaintiffs' Petition, Exhibit B)

6) On March 13, 1998, the Plaintiffs met as "the Executive Board of PACK." In that meeting, each Plaintiff personally voted ("5-0") to give Mr. Stagni a campaign contribution from PACK funds:

> *Discussion by the board:* on the amount of the donation to Dr. Stagni. A motion made by Polito second by Lynch, to donate $300.00 to Dr. Stagni. This amount should cover the cost of a newspaper article, which would give P.A.C.K. some exposure. The motion carried 5-0.

7) On March 14, 1998, the Plaintiffs provided a formal letter of endorsement to Mr. Stagni.

8) On March 30, 1998, the Plaintiffs did provide a $300 campaign contribution to Mr. Stagni.

9) On May 4, 1998, Chief Congemi directed his internal affairs division to commence a formal investigation under normal Civil Service Rules "towards possible disciplinary action, demotion or dismissal." (Exhibit 18) During this investigation, all provisions of "Louisiana's Police Officers' Bill of Rights" were fully respected.

10) On May 7, 1998, recorded statements were taken from each Plaintiff by the Kenner Police Department Internal Affairs Division. No information was obtained during any of those statements which contradicted any of the facts being set forth in this chronology. (Exhibit 1)

11) On June 1, 1998, Chief Congemi provided advance written notice to each of the Plaintiffs that a pre-termination hearing would be conducted on Thursday, June 4, 1998. (Exhibit 24)

12) On June 4, 1998, Chief Congemi did conduct a pre-termination hearing.

13) On June 15, 1998, and in compliance with the direct command of the Louisiana Legislature found at La.R.S. 33:2504(B), Chief Congemi terminated each of the five Plaintiffs. This decision was predicated upon Chief Congemi's review of each of the documents provided to this Court as Exhibits 2-24.

14) Each Plaintiff has timely appealed their termination to the Kenner Civil Service Board. Due to scheduling conflicts, those hearings have not as yet been completed, and no decision has yet been made.

Respectfully submitted,

NIELSEN LAW FIRM

/s/ Gerald J. Nielsen

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

WESTLEY WEST, ET AL.	CIVIL ACTION
VERSUS	NO. 98-1654
NICK A. CONGEMI,	SECTION "T" (2)
CHIEF OF POLICE	

****

PLAINTIFFS' STATEMENT OF UNDISPUTED FACTS

The plaintiffs, Westley West, Dennis Lynch, Robert Polito, Henry Jaume, and Bruce Verrette, by counsel, submit the following undisputed material facts in support of their Cross Motion for Summary Judgment.

In response to the Defendant's Statement of Material Facts, the plaintiffs agree that paragraphs 1, 2, 4, 5, 9, 11, 12, and 14 are undisputed.

Paragraph 3 restates an Attorney General letter and statute, both of which speak for themselves. It is disputed that the Attorney General's opinion is consistent with law.

Paragraph 6 is disputed to the extent that it states that each plaintiff "personally" voted. As the minutes themselves reflect, the plaintiffs voted in their capacities as Union officials and Executive Board members. Their votes were not undertaken for any individual or personal purpose. See, Defendant's Exhibit 26; Affidavit of Westley West (hereafter "West.Aff").

Paragraph 7 is disputed to the extent that it states the plaintiffs provided an endorsement letter to Mr. Stagni. As is evidenced by the letter itself, the Union, Police Association City of Kenner, International Union of Police Associations,

Local 8195, AFL-CIO ("PACK, Local 8195"), and not any individuals, provided a formal letter of endorsement to Mr. Stagni on or about March 14, 1998. See, Defendant's Exhibit 12; West.Aff.

Paragraph 8 is disputed to the extent that it states the plaintiffs provided any contribution. The check itself and the minutes of the Union meeting, clearly reflect that the Union, PACK, Local 8195, and not any individuals, provided a $300 campaign contribution to Mr. Stagni on or about March 30, 1998. See, Defendant's Exhibit 13; West.Aff.

Paragraph 10 is disputed to the extent that it states "No information was obtained during any of those statements which contradicted any of the facts being set forth in this chronology." This statement is not disputed if modified by this Statement of Plaintiffs' Undisputed Facts.

Paragraph 13 is hotly disputed as it is the crux of the case. On June 15, 1998, Chief Congemi terminated each of the five plaintiffs for their exercising their right to associate and for their active participation in PACK, Local 8195. PACK, Local 8195 engaged in protected political speech when it endorsed Candidate Stagni and contributed to his campaign. The Executive Board members engaged in protected association when they actively participated in the Union's activities. No Louisiana statute or interpretation of the U.S. Constitution permits, much less "commands" termination in such circumstances.

1. The officers were each police officers in the Kenner Police Department who were performing at least satisfactorily, if not exemplary, at the relevant times to this action.

2. The five plaintiff officers were also actively involved in PACK, Local 8195, the Police Association Union

representing police in Kenner. They comprised the Executive Board of the Union.

3. Chief Nick A. Congemi was, at all relevant times, the Chief of Police of the Kenner Police Department and was the official with the final authority regarding policy and employment matters within the Police Department.

4. On or about February 23, 1998, Joseph Stagni, candidate for Councilman-at-Large for the City of Kenner, wrote to the Union and asked PACK, Local 8195 to endorse him. See, Defendant's Exhibit 9.

5. On or about March 3, 1998, PACK, Local 8195 polled its membership to determine whether the Union should endorse Candidate Stagni, or if there was any significant opposition thereto. See, Defendant's Exhibit 10.

6. On or about March 10, 1998, Chief Congemi sent an intimidating letter to all members of the Union. See, Exhibit C.

7. In the letter, after questioning internal union procedures, Chief Congemi then expresses concern that the Union might endorse a particular candidate without interviewing Candidate McCarthy, the Chief's preferred candidate.

8. Chief Congemi also threatened "The PACK Executive Board members will obviously answer for their actions in the near future." Chief Congemi then refuted the factual statements Candidate Stagni made in support of PACK, Local 8195's endorsement.

9. In the letter, Chief Congemi next endorses Candidate McCarthy, calling him "a true friend of every police employee" and emphasizing that he is responsible for their high salaries.

10. The Chief then contends that PACK, Local 8195's endorsement of Stagni will "plung[e] this department into political chaos. The backlash can impact you and your families for years to come."

11. He then advises the members of the association that if they tell the Executive Board that the members do not want to be involved in politics, "then PACK leaders, Westley West, Dennis Lynch, Robert Polito, Henry Jaume, and Bruce Verrette must answer for their political activities."

12. Finally, he tells the union members to forward a copy of their opposition to PACK, Local 8195 to his office so their boss, the Chief of Police "will know how you truly feel about this important issue."

13. Chief Congemi concludes the letter advising his subordinates that they should not allow the union "to destroy your future as a Kenner police officer."

14. The Executive Board received three letters of opposition, each of these mimicked or referenced Chief Congemi's letter. West.Aff.

15. The Executive Board then met to vote on the endorsement. Prior to voting, PACK, Local 8195 obtained advice from its counsel as to whether the union could endorse a political candidate. The Union was advised by several attorneys that it could engage in such Constitutionally protected political speech. See, Defendant's Exhibit 26.

16. The Union then voted to endorse Candidate Stagni and provide him with a contribution. See, Defendant's Exhibit 26; West.Aff.

17. None of the plaintiffs ever provided Candidate Stagni with a contribution in their personal or individual capacities or in their official police capacities.

18. The contribution to Candidate Stagni was written on PACK, Local 8195's checks' and came from its general treasury. None of the plaintiffs provided PACK, Local 8195 with funds so that it could forward those funds to Candidate Stagni. See, Defendant's Exhibit 13; West.Aff.

19. On or about March 14, 1998, PACK, Local 8195 wrote to Candidate Stagni providing him with the endorsement. See, Defendant's Exhibit 12.

20. None of the plaintiffs ever endorsed Candidate Stagni in their personal or individual capacities or in their official police capacities. See, West.Aff.

21. No public announcement of PACK, Local 8195's endorsement of Candidate Stagni was made by the union. Candidate Stagni listed PACK, along with other unions such as the AFL-CIO (to which PACK is affiliated), the Kenner Fire Fighter Association, the Jefferson Federation of Teachers, and other organizations as supporting him in or about April, 1998. None of the Executive Board members were named. See, Defendant's Exhibit 15; West.Aff.

22. On June 15, 1998, after conducting an internal affairs investigation, Chief Congemi carried through on his promise that the PACK, Local 8195's Executive Board members would answer for their actions and terminated all five officers.

23. On June 16, 1998, this Court refused the officers' bid for a temporary emergency injunction to allow them to continue working until the conclusion of their Civil Service Hearing.

24. The Civil Service Hearing remains ongoing.

25. Chief Congemi has since 1995 been attempting to change the Civil Service System which efforts have been opposed by PACK.

26. Chief Congemi has on various occasions referred to plaintiff Robert Polito and the entire Executive Board of PACK as "stupid."

27. Chief Congemi has on prior occasions instructed his staff officers to encourage other police officers to quit the union so that the union will fall apart.

28. Chief Congemi has in the past stated that he wanted to get rid of PACK because they were in his way.

29. Chief Congemi has specifically requested that certain officers maintain their membership in PACK so that they could act as spies for him.

Respectfully submitted,

/s/ Keith Credo
KEITH R. CREDO (BAR NO. 4590)
A Professional Law Corporation
3313 Jurgens Street - Suite A
Metairie, Louisiana 70002
Telephone: (504) 456-2742
ATTORNEY FOR PLAINTIFFS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

WESTLEY WEST, DENNIS LYNCH, ROBERT POLITO, HENRY JAUME, and BRUCE VERRETTE	CIVIL ACTION NO.98-1654 SECTION "T"
VERSUS	
NICK A. CONGEMI, CHIEF OF POLICE	MAGISTRATE 2

DEFENDANTS RESPONSE TO PLAINTIFFS' STATEMENT OF UNCONTESTED FACTS

NOW INTO COURT through undersigned counsel come Defendants, Chief Nick Congemi (sued individually) and the City of Kenner, who submit the following response to the Plaintiffs' Statement of Undisputed Facts.

First, Defendants note that Plaintiffs did not actually *dispute* any of the facts which are material to the Defendants' Motion for Summary Judgment. For instance, item 6 of Defendants' Statement of Undisputed Facts is questioned solely because of the use of the word "personally." Plaintiffs misconstrued the use of the word. The word "personally" was used solely to emphasize that each of the five Plaintiffs did vote. They thus did "take part." The word was not used in the sense claimed by the Plaintiffs, that being in a particular "capacity." La.R.S. 33:2504 does not talk about capacity. It talks about "direct or indirect" action. Thus, while Plaintiffs *quibble* as to material facts, they do not actually place any given fact in contest such that a jury would have to choose between a given fact "A", as opposed to a given fact "B". Thus,

there is no "genuine" dispute as to any "material" fact concerning Defendants' motion, before the Court.

Second, Defendants submit the following response with regard to each of the items contained in Plaintiffs' Statement of Undisputed Facts, which presumably were presented with reference to the *Plaintiff's* Motion.[1] **Note, the following facts are *not* material to the *Defendants'* Motion:**

1. This is not "material" to any issue before the court.

2. Disputed, for two reasons: First, two of the Plaintiffs previously swore under oath in a prior state court proceeding that PACK was *not* a union (Ex. B) Second, pages ten through fifteen of Exhibit A show that the Plaintiffs are not the executive officers of anything.

3. Disputed. La.R.S. 33:2504 constitutes the policy of the state of Louisiana, and not Kenner. Chief Congemi cannot make policy for Kenner with respect to state law. As such he is not the policymaker for the City of Kenner on this particular issue. When, as here, the municipal official's discretion is constrained by state law, "his deliberate or mistaken departure from the controlling law" cannot be said to represent county [a/k/a municipal] policy." *Bigford v. Taylor* 834 F.2d 1213, 1222 (5th Cir. 1988) (Rubin, Author)

4. Disputed only to the extent that there is no reference to either "the union" or "local 8195" in the letter at issue, which is found at Defendants' Exhibit 9.

5. Immaterial, and disputed. Plaintiffs have never explained why polling is material to any issue under La.R.S. 33:2504. (Defendants' *challenge* Plaintiffs to explain how polling is "material" to any issue before the Court.) In any

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[1] Any exhibits referenced herein are attached to the memorandum contemporaneously filed by Defendants with this pleading.

event, it is disputed that any polling occurred in accordance with PACK's By-Laws. The Plaintiffs' March 3, 1998 letter does nothing beyond ask for written objections. This is *not* the manner in which the By-Laws of this organization require that votes of the membership are to be taken. Accordingly, even if these people are PACK officers as they claim, they certainly didn't follow their organization's rules and regulations as to how votes on issues are to be handled.

6. Immaterial, and disputed. Chief Congemi's actions are not relevant or material to any aspect of whether Plaintiffs violated §2504. Moreover, the Chief's letter is no more "intimidating" than the various warning letters sent out by the State Examiner and/or the opinion letters of the Attorney General. Also, PACK, according to Exhibit B, is not a Union.

7. - 13. Each of these averments are immaterial and disputed. They are immaterial because Chief Congemi's letter does not somehow give Plaintiffs a "free pass" to violate §2504. They are disputed to the extent that Plaintiffs' paraphrase Chief Congemi's letter at length. It is a short document, and can be read by the Court.

14. Immaterial, and disputed. Like the issue of polling, nothing in §2504 makes opposition from the membership relevant. The fact is also disputed, in that fourteen persons signed one of the letters. As such, almost a fourth of the membership called for a vote upon the issue, but was ignored.

15. Immaterial, and disputed. Plaintiffs' claims of good faith are immaterial, for the only statute before the Court is §2504. The additional penalties of La.R.S. 33:2507, for which willfulness *is* an element, is not at issue. Additionally, Defendants must dispute what these attorneys supposedly said, for their comments are not presented to the Court in competent summary judgment evidence. All that is presented is the vague conclusion that these attorneys supported the acts in question.

If their opinions were worthy of belief, they would be worthy of direct presentation to this Honorable Court.

16. Immaterial, and disputed. §2504 prohibits both "direct and indirect" political activity. *How* these people "took part" in Mr. Stagni's campaign is not material. *Any* taking part violates the statute. Moreover, PACK's By-Laws prescribe how votes are to be taken. None of the facts presented by PACK's supposed executive Board indicates any compliance with PACK's rules. How then, could it be said that PACK voted.

17. Immaterial, and disputed. The point is immaterial, in that no where in §2504 does the statute address "capacities." It clearly bars any political support of a candidate, whether it is accomplished "directly or indirectly." In essence, the Plaintiffs tell this Court that *they did it* collectively or *they did it* in their official capacities, or *they did it* as board members. To state their argument is to *show* its weakness. Their argument can't be stated, without stating that ***they did it.***

18. Immaterial and disputed. Nothing within §2504 makes the source of funds a material issue. Additionally, the item is disputed as to the reference to "Local 8195," for the checks make no reference to a local or to a Union. See Defendants' exhibit 13.

19. Disputed with regard to the reference to "local 8195." There is no reference to a "local" on the letter.

20. Please see Defendant's response to item 17, which is incorporated herein by reference.

21. This item is disputed, for respectfully it makes no sense. The first sentence is in conflict with the second sentence. Moreover, please see item 12 of the Appendix in *CSC v. Letter Carriers* 93 S.Ct.2880, 2898 (1973). These particular Civil Service Employees placed the endorsement letter into the

political election contest, and are responsible for every use made of it by the candidate. Id.

22. The fact of an internal affairs investigation, and of the terminations, are of course, not disputed. The rhetoric as to these facts, being nothing beyond argument, are disputed.

23. Not disputed, except for the reference to "officers." As explained by documents 10-15 in Exhibit A, the Plaintiffs are not officers of anything.

24. Not disputed.

25. Immaterial and disputed. As a matter of law, as explained in the contemporaneously filed Memorandum in Opposition to Cross Motion for Summary Judgment, Chief Congemi's subjective motivations *cannot* be considered in the context of his qualified immunity based Motion for Summary Judgment. Moreover, it is unclear whether PACK opposed anything, given that the Plaintiffs were not its officers.

26. Immaterial, for the reasons noted above.

27. Immaterial. Chief Congemi's actions cannot be relied upon to create a "free pass" which would absolve the Plaintiffs of the legal consequences of violating §2504.

28. Immaterial, and disputed. Chief Congemi's subjective motivations are completely immaterial for the reasons noted above. Moreover, Chief Congemi has never made an attempt to "get rid of PACK."

29. Immaterial, and disputed. This is nothing beyond an improper attempt to try to defeat the defense of qualified immunity through immaterial and irrelevant allegations of malice and improper claims as to subjective motivations. All pertinent

Supreme Court and Fifth Circuit precedents clearly explain that all such factors are immaterial to qualified immunity analysis.

Respectfully submitted,

Nielsen Law Firm

Philip J. Boudousque'
The Pelican Building
2121 Airline Highway
Suite 505
Metairie, Louisiana 70001
(504) 828-9929
Counsel for Nick A.
Congemi and
the City of Kenner

/s/ Gerald J. Nielsen
Gerald J. Nielsen #17078
Susan A. Weldon #21142
The Pelican Building
2121 Airline Highway
Suite 200
Metairie, Louisiana 70001
(504) 837-2500
Counsel for Nick A. Congemi
and the City of Kenner

CERTIFICATE

I hereby certify that a copy of the above and foregoing pleading has been served on all counsel of record by depositing same in the United States Mail, postage pre-paid and properly addressed at Metairie, Louisiana, this 27th day of October, 1998.

/s/ Gerald J. Nielsen

APPENDIX K

[SEAL]

CITY OF KENNER
1801 Williams Boulevard
Kenner, Louisiana 70062
(504) 468-7200

LOUIS J. CONGEMI
MAYOR

MEMORANDUM

DATE: February 17, 1998

TO: ALL CLASSIFIED EMPLOYEES

FROM: Frank Simoncioni, Chairman, Civil Service Board

RE: POLITICAL ACTIVITIES PROHIBITED

NOTICE

All classified employees are prohibited from political activities as stated in R.S. 33:2504. Please review attached political activities guideline.

The penalty for violation of Civil Service Law is as follows:

"R.S. 33:2507 Penalties - Whoever wilfully violates any provision of this Section or of the rules shall be fined more than five hundred dollars and shall, for a period of six years, be ineligible for appointment to employment in any position of the classified service. If he is an officer or employee of the classified service shall forfeit his office or position."

PLEASE POST THIS NOTICE FOR ALL CIVIL SERVICE EMPLOYEES

FS:jps

Attachment

cc: Police Chief Nick Congemi
Jail - Police Department
Communications - Police Department
Fire Chief Zito
All Fire Stations
Gregory G. Gremillion, Board Attorney
Beverly Nicolosi, Personnel Department

POLITICAL ACTIVITY RESTRICTED BY MUNICIPAL FIRE AND POLICE CIVIL SERVICE LAW

Warning To Classified Employees Of The Fire And Police Departments And To Members Of The Fire And Police Civil Service Boards

EMPLOYEE DEFINED

An employee, as referred to in this bulletin, is any person holding a job or position in the classified service of the Fire or Police Department by emergency, provisional, substitute, probationary, or permanent appointment. Such person is an employee and his political activity is regulated: (1) While he is on active duty or while off duty. (2) While on annual or sick leave. (3) While on educational, military, maternity, civil, emergency, or compensatory leave. (4) While on leave of absence of any type, with or without pay. (5) While off duty during a holiday. (6) While under suspension without pay.

SPECIFIC PROHIBITIONS IN THE LAW REGULATING POLITICAL ACTIVITY ON THE PART OF EMPLOYEES

Directly or indirectly paying or promising to pay any assessment, subscription or contribution for any political organization or purpose.

Soliciting or taking any part in soliciting any assessment, subscription, or contribution for any political organization or purpose.

Being a member of any national, state, or local committee of a political party.

Being an officer or member of any factional political club or organization.

Being a candidate for nomination or election to any public office.

Making any political speech or public political statement on behalf of any candidate, faction, or party as a part of any political campaign for the nomination or election of public officers.

TAKING PART IN THE MANAGEMENT OR AFFAIRS OF ANY POLITICAL PARTY OR IN THE POLITICAL CAMPAIGN OF ANY CANDIDATE FOR PUBLIC OFFICE, EXCEPT TO PRIVATELY EXPRESS HIS OPINION AND TO CAST HIS VOTE.

COERCION OR INTIMIDATION OF EMPLOYEES PROHIBITED BY THE FIRE AND POLICE CIVIL SERVICE LAW

No appointing authority or agent or deputy thereof or supervisor of any employee shall directly or indirectly demote, suspend, discharge, or otherwise discipline any person in the classified service for the purpose of influencing his vote, support, or other political activity in any election or primary election; and no appointing authority or agent or deputy thereof shall use his political authority or influence, by threats, promises, or other means, directly or indirectly, to punish or coerce the political action of any employee in the classified service.

OTHER PROHIBITIONS IN THE FIRE AND POLICE CIVIL SERVICE LAW AFFECTING PERSONS NOT NECESSARILY EMPLOYEES

No person shall be appointed or promoted to or demoted or dismissed from any position in the classified service, or in any way favored or discriminated against with respect to his political or religious opinions or affiliations.

No person shall commit or attempt to commit any fraud preventing the impartial execution of the civil service law.

No person shall solicit any assessment, subscription, or contribution of any employee in the classified service.

No person shall, directly or indirectly, give, render, pay, offer, solicit, or accept any money, service, or other valuable consideration for or on account of any appointment, proposed appointment, promotion, or proposed promotion to, or any advantage in, a position in the classified service.

PENALTIES FOR VIOLATION OF FIRE AND POLICE CIVIL SERVICE LAW

Whoever willfully violates any provision of this law or of the rules shall be fined not more than five hundred dollars and shall, for a period of six years, be ineligible for appointment to or employment in any position of the classified service. If he is an officer or employee of the classified service he shall forfeit his office or position.

SEE REVERSE SIDE FOR EXAMPLES

Do Not Remove By Order Of The Civil Service Board

COMMENT BY STATE EXAMINER

The State Examiner will not attempt to define all conduct constituting violation of the civil service law relating to prohibited political activity. It is the function of the local civil service board to determine violations. However, the State Examiner's Office continuously receives questions requesting interpretations of the political activity restrictions placed on classified employees. Some of the more frequently asked questions are listed below. For ease of reference we have divided these into two columns. Answers to the questions in the left-hand column would be "No." This type of activity would be prohibited under existing restrictions. Answers to the questions in the right-hand column would be "Yes." Such activity has not been interpreted as contrary to political activity restrictions.

NO

May I wear a badge, button, T-shirt, or other item of clothing printed as a vote solicitation for a candidate, faction, or party?

May I display a political sticker on my personal vehicle?

May I accompany a candidate door to door to solicit voter support?

May I store, distribute, or transport political literature, posters, or other political data?

May I post political signs, pictures, or ads in public places, or display them in my home, yard, office, or elsewhere?

May my photograph be used, either individually or in a group, in campaign literature or ads?

May I distribute, sell, or solicit the sale of tickets to a political function or encourage attendance at such functions?

May I purchase a ticket for a function for a political candidate or may I attend such a function if someone gives me a free ticket?

May I sign a petition to have a person's name added to a ballot for an elected public office?

May I work at campaign headquarters, address campaign literature or envelopes, plan or arrange for a political rally or meeting, act as a driver or chauffeur for a candidate in an election campaign, or otherwise assist in a campaign?

May I sponsor a political function or any type of political meeting for a candidate or party in my home?

May I solicit votes or support for a candidate or party by any means or communication?

May I contribute a vehicle or money to promote transportation of voters to the polls?

The above restrictions would still apply even if the candidate for public office is the classified employee's spouse.

YES

May I designate $1.00 on my federal income tax return to a presidential campaign?

May my spouse place political bumper stickers on his/her personal vehicle? (*Provided* you do not drive the vehicle).

May my spouse place political signs, pictures, or ads in our home, yard, or at other domiciles or places of business owned jointly by both of us?

May I be a member of an association which occasionally lobbies to get certain legislation approved? (*Provided* the legislation is not such that would support or endorse any candidate.)

May I participate as a member of a group hired to perform at a political function? (*Provided* the group's fees have not been reduced or waived for political reasons.)

May I introduce political candidates at a function at which all candidates will speak?

May I actively support a school bond issue or other non-candidate election?

May I attend a political rally that is free and open to the public?

May I sign a recall petition? (*However,* you are *prohibited* from soliciting signatures for the position.)

Please take special note of all parenthesized exceptions above.

****

The examples listed on this page are merely illustrations. They do not include all possible violations. When an employee is in doubt as to the propriety of his action he should refrain therefrom. Attention is again specifically called to the following provisions of the law: "NO EMPLOYEE IN THE CLASSIFIED SERVICE SHALL -- TAKE PART IN THE MANAGEMENT OR AFFAIRS OF ANY CANDIDATE FOR PUBLIC OFFICE, EXCEPT TO PRIVATELY EXPRESS HIS OPINION AND TO CAST HIS VOTE." Article X, Section 20 of the Constitution of the State of Louisiana and Revised Statutes 33:2504 and 33:2564.

ISSUED BY
STATE EXAMINER
MUNICIPAL FIRE AND POLICE CIVIL SERVICE
BATON ROUGE, LOUISIANA

[photo omitted] **JOE STAGNI** [photo omitted]

1700 Taylor St.
Kenner, LA 70062

February 23, 1998

P.A.C.K.

P.O. Box 641273

Kenner, LA 70064

Dear Brothers & Sisters:

I am seeking the office of Councilman At-Large Division "A" in Kenner. I have a long history with the working men and women of our state.

As a member of the LA Union of Chiropractic Physicians, I have not only fought for issues that affect my patients and my profession, I also stood with firemen and policemen when your civil service system was under attack. I worked with Jerry Bloom, M. McCoy and Billy Sanchez.

I am on record supporting working men and women of our city and state. Now, I need you to stand by me. You can be assured that your issues are my issues and together we can do a better job.

Your endorsement is very important and it will help me be a voice for you on the council. Please accept this letter as a formal request seeking the endorsement of your organization.

If your organization is inclined to endorse me, please let me know as soon as possible. My public relations person will coordinate press releases from your organization and my campaign.

If you have any questions, contact Rebecca Car at 464-1998 or 443-6220.

Thanking you for your consideration, I am

Sincerely,

/s/ Joe
Joseph "Joe" Stagni
Div. "A" Council At-Large Candidate

[Seal] [Seal]

PACK

POLICE ASSOCIATION CITY OF KENNER
ASSOCIATIONS AFL-CIO LOCAL 8195
P.O. Box 641273
Kenner, LA 70064

March 3, 1998

Dear Member,

On February 23, 1998 The Executive Board received a letter from a Kenner business man Mr. Joseph Stagni, who advised that he is seeking the office of Councilman At-Large Division "At" in Kenner.

He advised that he is a member of the LA Union of Chiropractic Physicians, and that he stood with the police and firemen when our Civil Service System was under attack, in support of preserving the system as it is today.

He is now asking for our support in his endeavor to seek the office of Councilman At-Large for Division "A" in Kenner.

At this the time we, The Executive Board of the Police Association City of Kenner (P.A.C.K.), have decided to endorse and support Mr. Stagni in his endeavor to seek political office.

However, as a member of our very strong and growing organization, you also have a voice in our decision. Therefore we are asking that if you have any objection to the decision of The Executive Board, please notify any one of us in writing by Friday March 13, 1998.

We Remain,

/s/ Westly West	/s/ Dennis Lynch	/s/ Robert Polito
Westly West	Dennis Lynch	Robert Polito
President	Vice-President	Secretary
/s/ Henry Jaume	/s/ Bruce Verrette	
Henry Jaume	Bruce Verrette	
Treasurer	Sergeant At Arms	

[Seal]

Kenner Police Department
Office Of The Chief

NICK A. CONGEMI
Chief of Police

March 10, 1998

Henry Jaume
1817 Francis Ave
Metairie, LA 70003

Dear Henry,

On March 3, 1998, the attached letter was sent to all members of the Police Association, City of Kenner (P.A.C.K.) indicating that the Executive Board of the organization consisting of Westley West, Dennis Lynch, Robert Polito, Henry Jaume, and Bruce Verrette has decided to endorse candidate Joe Stagni against incumbent Councilman-at-Large Terry McCarthy.

I am primarily concerned about how the P.A.C.K. Executive Board decided this issue without any input from you as a member!

A question that begs to be answered is how the P.A.C.K. Executive Board has unilaterally contacted Mr. Stagni, in violation of state Civil Service laws, then formulate an opinion about the candidates without interviewing Councilman McCarthy? The P.A.C.K. Executive Board members will obviously answer for their actions in the near future.

The P.A.C.K. letter stresses that Mr. Stagni, a member of the Louisiana Union of Chiropractic Physicians, "stood with the police officers and firefighters when our Civil Service system was under attack," in support of preserving the system as it is today. There is no evidence to support this claim. I have

been involved in the issue of seniority versus merit based Civil Service for years, and at no time encountered Mr. Stagni in any fashion.

This police department has grown and prospered under the present government with Councilman McCarthy at the helm. He has been a true friend of every police employee. We have enjoyed great benefits, the highest salary in Louisiana, and the finest crime fighting equipment in the world because of him. It is unconscionable how anyone can make a decision hearing from only one candidate while Councilman McCarthy has a proven track record of supporting the Kenner Police Department.

Those of short, narrow vision who sit on the P.A.C.K. Executive Board do not fully comprehend the ramifications of their actions by plunging this Department into political chaos. The backlash can impact you and your families for years to come. This Department has enjoyed great support from the Kenner City Council, which controls our budget. As such, we are dependent on the Council's support.

This Department has always been above politics as it should be because of Civil Service. Unfortunately, you cannot ignore this particular situation as it seems that the P.A.C.K. Executive Board has already made the decision for you and now gives you an ultimatum. Although the letter indicates you have a voice, it did not say you have a vote!

If you do not respond, they will feel you are supportive of their questionable actions. However, if you vote and tell them loud and clear that you do not want this organization to be involved in politics whatsoever, then P.A.C.K. leaders West, Lynch, Polito, Jaume', and Verrette must answer for their political activities.

When you do respond to the P.A.C.K. letter, please forward a copy of your response to my office so we will know how you truly feel about this important issue. Please do not allow a few perpetually disgruntled, bitter individuals to destroy your future as a Kenner police officer.

Sincerely,

/s/ Nick Congemi
Nick A. Congemi
Chief of Police

NAC/jn

[Seal] [Seal]

PACK

POLICE ASSOCIATION CITY OF KENNER
ASSOCIATIONS AFL-CIO LOCAL 8195
P.O. Box 641273
Kenner, LA 70064

MONTHLY BOARD MEETING
POLICE ASSOCIATION CITY OF KENNER

March 13, 1998

ORDER OF BUSINESS

1. Meeting called to order by President Westly West at 1730 hours.

2. Roll call of the Executive Board in attendance.

   Westly West - President Dennis Lynch - Vice-President Robert Polito - Secretary

   Henry Jaume - Treasurer Bruce Verrette - Sergeant At Arms

3. Reading of the minutes for the month of February by Polito. A motion to accept the minutes as read by Polito, was made by Lynch second by Jaume. This motion carried 5-0.

5. The financial report was dispersed by Jaume to all Board Members Present. A motion to accept the financial report dispersed by Jaume was made by Polito second by Lynch. The motion carried 5-0

Incoming Correspondences:

1. Letter from Christy Newman, expressing her desire not to be politically involved.
2. Letter of Gilbert Newman, expressing his desire not to be politically involved.
3. Letter from Billy Mouret, expressing his desire not to be politically involved, and advising the board to keep up the good work.
4. A letter from several members requesting a meeting regarding the endorsement of Joe Stagni.
5. Letter from Chief Congemi.

Outgoing Correspondences

1. Letter to the members advising of the decision of the Board to support Joe Stagni, if the Majority of the membership agreed.

Reports of Committees:

None

New Committees:

None

New Business:

1. *Discussion by West:* Regarding the letter from Chief Congemi, West instructed Jaume to check with Falcon, Daly, Desalvo, and the results were the same. That P.A.C.K. has the absolute right to endorse a candidate as an organization. In fact Falcon advised that it was Chief Congemi who is acting illegally with his letter on Kenner Police Department letterhead.
2. *Discussion by Jaume:* that he would check the post office box at midnight to make sure no other letters of objection

were received. If there were no other letters than he would type the endorsement letter.

3. *Discussion by the Board:* that only three letters of objection were received, and that Gil Newman's letter would not be accepted due to the fact that he was in arrears of his dues and not a member in good standing at the time of the vote.

4. *Discussion by the Board:* on the amount of the donation to Dr. Stagni. A motion made by Polito second by Lynch, to donate $300.00 to Dr. Stagni. This amount should cover the cost of a newspaper article, which would give P.A.C.K. some exposure. The motion carried. 5-0.

5. * * * *

6. *Discussion by West:* to join the Greater New Orleans AFL-CIO. A motion was made by West second by Jaume to join the AFL-CIO. The motion passed 5-0.

7. *Discussion by the Board:* regarding the application request for membership by Carl Lemoine The Board has decided by a 5-0 vote to deny the application of Carl Lemoine because of his public attack on P.A.C.K., and that his position with the department would be a conflict of interest. A letter will be sent.

[Seal] [Seal]

PACK

POLICE ASSOCIATION CITY OF KENNER
ASSOCIATIONS AFL-CIO LOCAL 8195
P.O. Box 641273
Kenner, LA 70064

March 14, 1998

Joseph Stagni
1700 Taylor St.,
Kenner, La 70062

RE: Endorsement

Dear Mr. Stagni:

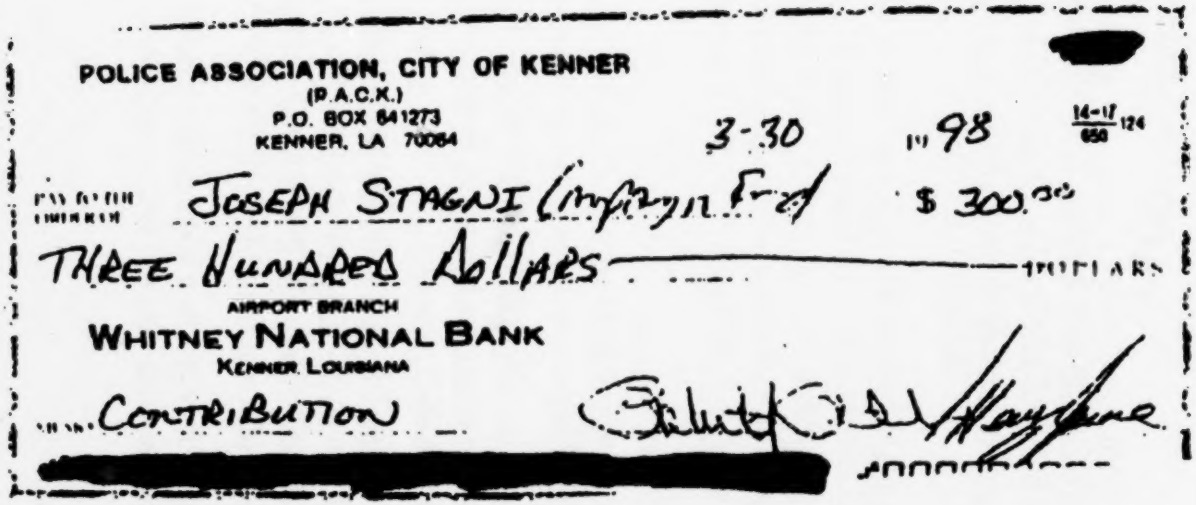
This letter is in response to your letter requesting the endorsement of our organization, the Police Association City of Kenner (P.A.C.K.).

I am pleased to advise you, that after polling the membership, the Police Association City of Kenner (P.A.C.K.), will be endorsing your candidacy for Councilman At-Large Division "A" in the City of Kenner, on April 4, 1998.

We are looking forward to a successful working relationship with you, and we wish you the best of luck in your upcoming endeavor.

Respectfully,

/s/ Westly West
Westly West
President



POLICE ASSOCIATION, CITY OF KENNER
(P.A.C.K.)
P.O. BOX 641273
KENNER, LA 70064

3-30 19 98 14-17/650 124

PAY TO THE ORDER OF JOSEPH STAGNI (Campaign Fund) $ 300.00

THREE HUNDRED Dollars DOLLARS

AIRPORT BRANCH
WHITNEY NATIONAL BANK
KENNER, LOUISIANA

FOR CONTRIBUTION

[redacted]

JOE STAGNI'S
proposal for
A BETTER KENNER

★★★★★★★★★★★★★★★★★★★★★

- ★ A strong independent civil service system for city employees
- ★ Establish an open and fair selection process for awarding "Professional Service Contracts"
- ★ Allow citizens to vote on Charter change recommendations made by a Citizen Advisory Committee
- ★ Establish a politically independent planning committee
- ★ Establish a "Rainy Day Reserve Fund" with revenue from gambling sources
- ★ Establish local initiative Charter Amendment

★★★★★★★★★★★★★★★★★★★★★

These are just some of the reasons why **JOE STAGNI,** is endorsed and supported by:

- Alliance For Good Government
- AFL-CIO
- Jefferson Federation of Teachers
- Jefferson Parish Councilman John Lavarine
- Jefferson Independent Voter Association (JIVA)
- Kenner Fire Fighter Association
- Police Association City of Kenner
- Kenner Councilman John Lavarine, III
- Louisiana Criminal Justice Commission

- Spanish American Business Association (SABA)
- Coach J.T. Curtis

[Photograph omitted in printing]

FINALLY A CHOICE --
Joe Stagni a public servant,
not a politician who serves other politicians.

Paid for by Joe Stagni Campaign